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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,943	06/16/2000	Robert Eastman II	EOD-103-A	2911

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EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/595,943

Applicant(s)

EASTMAN, ROBERT

Examiner

Janet M. Wilkens

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3637

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

(Namely, it is improper to have the phrase "the present invention" in the abstract.)

Claim Objections

Claims 10 and 14 are objected to because of the following informalities: claims 10 and 14 do not end in a period. Appropriate correction is required.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 18-22 have been renumbered 20-22, 18 and 19. (Please note: Amendment B was received by the Office before (has an earlier date) Amendment A; therefore, the newly proposed claims had to be renumbered as stated above.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doshi in view of Hurst. Doshi teaches a portable receptacle/truck bed (Fig. 1) comprising: at least one wall (32) and lining material (50) disposed on a surface of the wall wherein the material comprises a binder (52) and a multiplicity of carbon particles (56) interspersed in the binder. For claim 1, Doshi fails to teach an enclosure. Hurst teaches a truck bed cover (10). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the truck bed of Doshi by adding a cover, such as is taught by Hurst, thereon, to provide the truck with a rear enclosure which would allow items to be transported therein without fear of moisture damage, etc.

For claim 3, Doshsi in view of Hurst fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to modify the binder of Doshsi in view of Hurst by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

Art Unit: 3637

Claims 1, 3, 4-7, and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view Vickers (5,678,247). Anderson teaches a portable enclosure (Fig. 1) comprising: a roof (40), door means (50) and four walls (20; the material of the walls being flexible enough to be folded but rigid enough to keep their shape when in their erected condition) wherein at least one wall has lining material (24) disposed thereon. The liner is for fire-proofing the tent. For claims 1 and 10, Anderson fails to teach a lining material wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Anderson by using an alternate liner therein, one that prevents human odor from being carrier outside the tent, such as is taught by Vicker, instead of the "flame resistant" liner presently used, depending on the priorities of the campers to be using the tent (e.g. if the campers want to camp in an area with a lot of bears, etc. a tent with "odor-absorbing" qualities would be more of a priority than a tent with a liner that helps prevent fires.) Furthermore, the liner material of Vickers is equivalent to that of the liner of Anderson, both being made of material.

For claims 3 and 11, Anderson in view of Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof.

Art Unit: 3637

The examiner takes Official notice that these materials are well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Anderson in view of Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claims 7 and 15, Anderson in view of Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been an obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Anderson in view of Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 9 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Vickers as applied to claims 1, 3, 4-7, and 10-15 above, and further in view of Tsai. As stated above, Anderson in view of Vickers teaches the specifications of claim 1, including a door on the enclosure. For claims 9 and 18-22, Anderson in view of Vickers fails to specifically teach that the door is a closable/zippered entrance. Tsai teaches a portable enclosure (Fig. 1) having a panel with a zippered entrance door (111) therein. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Anderson in view of Vickers by using an alternate door means thereon, i.e. using a zippered portion on wall (30) instead of the entrance way (50) presently used, to provide a door that would allow

Art Unit: 3637

the enclosure to completely enclose the space there inside, preventing insects, etc from entering, and that would allow the enclosure to occupy less space when erected (no entrance way ground space needed).

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Anderson and Vickers (5,678,247). Smith teaches a portable enclosure/hunting blind (Fig. 1) comprised of hingedly attached walls (18). For claim 1, Smith fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Smith, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vicker, to provide the hunting blind with an "odor-absorbing" feature.

For claim 3, Smith in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art.

Art Unit: 3637

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Smith in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claim 7, Smith in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Smith in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 1, 3-8, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Anderson and Vickers (5,678,247). Tsai teaches a portable enclosure (Fig. 1) comprised of four triangular panels joined to form a pointed dome shape; one panel having a zippered entrance door (111) therein. For claims 1 and 18-22, Tsai fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevent his scent from reaching the animals.

Art Unit: 3637

Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Tsai, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vickers, to provide the hunting blind with an "odor-absorbing" feature.

For claim 3, Tsai in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Tsai in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claim 7, Tsai in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Tsai in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 1, 3-7, 9-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beavers in view of Anderson and Vickers (5,678,247). Beavers

Art Unit: 3637

teaches a portable enclosure (Fig. 1) comprised of four X-shaped sub-frame assemblies (20), one foldably collapsible U-shaped support structure (24), four wall panels (Fig. 2; the material of the walls being flexible enough to be folded but rigid enough to keep their shape when in their erected condition) and a roof (see Fig. 2). A zippered entrance door (18) is contained in one of the wall panels of the enclosure. For claims 1 and 18-22, Tsai fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Beavers, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vickers, to provide the hunting blind with an "odor-absorbing" feature.

For claims 3 and 11, Beavers in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the

Art Unit: 3637

time of the invention to modify the binder of Beavers in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claims 7 and 15, Beavers in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Beavers in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Allowable Subject Matter

Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed December 28, 2001 have been fully considered but they are not persuasive.

In response to applicant's argument that Vickers is nonanalogous art: it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant

Art Unit: 3637

was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Vickers teaches odor-absorbing fabric made of a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevent his scent from reaching the animals. This type of material being transferable to other types of outdoor items, such as hunting blinds, tents, etc. Therefore, as stated above, it would have been obvious to modify the enclosure of Anderson by using this type of material/liner therein instead of the "flame resistant" liner presently used, depending on the desired need of the person making/using the tent. Furthermore, it would have been obvious to add this material on the hunting blind panels of Smith, the enclosure of Tsai and the enclosure of Beavers for the same advantages. (Note: The use of general liners on outdoor structures also being established by the reference of Anderson. See column 1, lines 23-26.)

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning: it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). See art rejections arguments above.

Addressing the argument concerning the Beavers reference: the examiner contends that the cord sections (24) at the front the enclosure do form a "foldably collapsible U-shaped support structure" and therefore do meet this limitation in claim 16.


The affidavits submitted on December 28, 2001 and January 30, 2002 have been reviewed. However, there does not appear to be any nexus between any facts, presented in the affidavits, alleging commercial success and the claimed invention. A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success and that the product that is commercially successful is the invention disclosed and claimed. *In re GPAC Inc., supra, 57 F.3d at 1580*. The present application claims several embodiments of outdoor structures, i.e. various tents/hunting blinds, which employ a scent-free liner. It is unclear which embodiment, if any, is the "game tracker" discussed in/by the *Inside Archery* magazine. Furthermore, the Ameristep brochure also fails to provide "commercial success" proof for the disclosed invention(s). It is unclear even if this article is referring to the disclosed invention in its line "Sure, other blinds offer scent control...". No definitive proof to such has been presented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-2204. The examiner can normally be reached on Monday-Thursday.

Art Unit: 3637

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Wilkens
March 4, 2003


JANET M. WILKENS
PRIMARY EXAMINER
Art 3637